

General Information Letter: 49 U.S.C. § 11108, which provides that state income tax need not be withheld from wages payable to certain employees engaged in interstate shipping by boat, does not exempt those employees from their obligation under IITA Section 803 to pay estimated Illinois income tax.

August 11, 2000

Dear:

This is in response to your letter dated July 10, 2000 in which you request a Letter Ruling. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department.

Although you have not specifically requested either type of ruling, the nature of your question and the information provided require that we respond only with a GIL.

In your letter you stated:

Enclosed you will find a penalty letter from the Illinois Department of Revenue. After speaking with a tax specialist regarding our situation, she advised us to request a private letter ruling. We are Florida residents. xxxxxxxxxxxxxxxxxx is an employee of an Illinois based company. He resides in Florida.

Under merchant tax law Title 86 Part 100 Sec. 100.2590 b) 49 U.S.C.A. 11108; xxxxxxxxxxxx employer is not obligated to withhold Illinois State Income Tax. However, we are liable to pay state tax because the majority of his income is earned in Illinois. Because of this law, taxes are not withheld and we pay our taxes at the end of the year.

We ask that the penalty be waived. Why would there be a law stating that it is okay for the employer to not withhold merchant mariner state taxes, yet not mention that they could be penalized for it. xxxxxxxx is not self employed, nor does he own his own company. We relocated to Florida two years ago and xxxxxxxx has continued to work for an Illinois based company. We have paid state tax without fail and will continue to obey the law, but we have been extremely upset over this matter as we would have chosen to have taxes withheld from the beginning to avoid a fine. Please consider this as you review our case. The tax specialist has agreed to withhold interest on our account until this matter is resolved.

DISCUSSION

In response to your letter, 49 USC 11108 does prevent the state of Illinois from requiring employers to withhold wages from seamen involved in the "foreign, coastwise, intercoastal, interstate, or

noncontiguous trade" under state tax laws. Assuming that this law does apply to someone in your situation it does not relieve you of the burden of paying Illinois income taxes. As you cited in your letter, 86 Il. Admin. Code § 100.2590 prevents the state of Illinois from requiring the withholding of Illinois taxes by your employer. However, it also states that your liability for those taxes is not affected; and more importantly, that your liability to make payments of estimated taxes under §803 of the Illinois Income Tax Act is not affected. Section 803(a) imposes the burden of filing estimated income taxes on "[e]very taxpayer other than an estate, trust, partnership, Subchapter S corporation or farmer...." Accordingly, the underpayment of estimated tax penalty cannot be waived. If you would like to avoid this situation in the future you may engage in a voluntary agreement with your employer to have your taxes withheld. This is not prohibited by 49 USC 11108.

As mentioned above, this is merely a general information letter and not a statement of policy and is not binding upon the Department. I hope that this has been helpful to you. The Department maintains a website, which can be accessed at www.revenue.state.il.us. If you have additional questions please feel free to contact me at the above address.

Very Truly Yours,

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